

AMENDED IN ASSEMBLY JANUARY 3, 2000

AMENDED IN ASSEMBLY APRIL 27, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1053

**Introduced by Assembly Member Thomson
(Principal coauthor: Assembly Member Zettel)
(Coauthors: Assembly Members Wayne and Wildman)**

February 25, 1999

An act to amend Section ~~1367.24 of the Health and Safety Code, relating to health care coverage.~~ 1464 of the Penal Code, relating to brain injuries, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1053, as amended, Thomson. ~~Health care service plans; drugs~~ Traumatic brain injury services funding.

Existing law, until January 1, 2005, requires the State Department of Mental Health to provide funding for a postacute continuum-of-care model for adults with acquired traumatic brain injuries.

Existing law establishes the Traumatic Brain Injury Fund which, upon appropriation by the Legislature, may be expended for purposes of this program.

Under existing law, once each month there is required to be transferred from the State Penalty Fund into the Traumatic Brain Injury Fund an amount equal to 0.66% of the state penalty funds deposited into the State Penalty Fund during

the preceding month, except that for each of the 1996–97, 1997–98, and 1998–99 fiscal years, the amount transferred is limited to \$500,000.

This bill would limit the application of the \$500,000 limitation to the 1996–97 fiscal year and would appropriate the moneys no longer subject to the limitation for purposes of the traumatic brain injury program.

~~Existing law provides for the licensure and regulation of health care service plans by the Department of Corporations, and provides that a willful violation of the regulatory provisions is subject to criminal sanction.~~

~~Existing law requires every health care service plan that provides prescription drug benefits to maintain an expeditious process by which prescribing providers may obtain authorization for a medically necessary nonformulary prescription drug pursuant to designated procedures.~~

~~This bill would prohibit a health care service plan from including the cost of medically necessary oral and injectable prescription drugs in the capitation and related payment of a prescribing or providing health care provider, medical group, independent practice association, or other prescribing entity. The bill would prohibit a health care service plan, or any pharmaceutical benefit management company contracting with the plan, from requiring any prescribing or providing health care provider, medical group, independent practice association, pharmacist, or other prescribing entity to assume any financial responsibility for the oral and injectable drugs. The bill would change references to “individual practice associations” in these provisions to refer instead to “independent practice associations.”~~

~~By imposing new requirements on health care service plans, this bill would change the definition of a crime, thereby imposing a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: ~~majority~~ ²/₃. Appropriation: ~~no~~ yes. Fiscal committee:
yes. State-mandated local program: ~~yes~~ no.

The people of the State of California do enact as follows:

1 ~~SECTION 1.—Section 1367.24 of the Health and Safety~~

2 *SECTION 1. Section 1464 of the Penal Code is*
3 *amended to read:*

4 1464. (a) Subject to Chapter 12 (commencing with
5 Section 76000) of Title 8 of the Government Code, there
6 shall be levied a state penalty, in an amount equal to ten
7 dollars (\$10) for every ten dollars (\$10) or fraction
8 thereof, upon every fine, penalty, or forfeiture imposed
9 and collected by the courts for criminal offenses,
10 including all offenses, except parking offenses as defined
11 in subdivision (i) of Section 1463, involving a violation of
12 a section of the Vehicle Code or any local ordinance
13 adopted pursuant to the Vehicle Code. Any bail schedule
14 adopted pursuant to Section 1269b may include the
15 necessary amount to pay the state penalties established
16 by this section and Chapter 12 (commencing with Section
17 76000) of Title 8 of the Government Code for all matters
18 where a personal appearance is not mandatory and the
19 bail is posted primarily to guarantee payment of the fine.

20 (b) Where multiple offenses are involved, the state
21 penalty shall be based upon the total fine or bail for each
22 case. When a fine is suspended, in whole or in part, the
23 state penalty shall be reduced in proportion to the
24 suspension.

25 (c) When any deposited bail is made for an offense to
26 which this section applies, and for which a court
27 appearance is not mandatory, the person making the
28 deposit shall also deposit a sufficient amount to include
29 the state penalty prescribed by this section for forfeited
30 bail. If bail is returned, the state penalty paid thereon
31 pursuant to this section shall also be returned.

32 (d) In any case where a person convicted of any
33 offense, to which this section applies, is in prison until the
34 fine is satisfied, the judge may waive all or any part of the
35 state penalty, the payment of which would work a

1 hardship on the person convicted or his or her immediate
2 family.

3 (e) After a determination by the court of the amount
4 due, the clerk of the court shall collect the penalty and
5 transmit it to the county treasury. The portion thereof
6 attributable to Chapter 12 (commencing with Section
7 76000) of Title 8 of the Government Code shall be
8 deposited in the appropriate county fund and 70 percent
9 of the balance shall then be transmitted to the State
10 Treasury, to be deposited in the State Penalty Fund,
11 which is hereby created, and 30 percent to remain on
12 deposit in the county general fund. The transmission to
13 the State Treasury shall be carried out in the same
14 manner as fines collected for the state by a county.

15 (f) The moneys so deposited in the State Penalty Fund
16 shall be distributed as follows:

17 (1) Once a month there shall be transferred into the
18 Fish and Game Preservation Fund an amount equal to
19 0.33 percent of the state penalty funds deposited in the
20 State Penalty Fund during the preceding month, except
21 that the total amount shall not be less than the state
22 penalty levied on fines or forfeitures for violation of state
23 laws relating to the protection or propagation of fish and
24 game. These moneys shall be used for the education or
25 training of department employees which fulfills a need
26 consistent with the objectives of the Department of Fish
27 and Game.

28 (2) Once a month there shall be transferred into the
29 Restitution Fund an amount equal to 32.02 percent of the
30 state penalty funds deposited in the State Penalty Fund
31 during the preceding month. Those funds shall be made
32 available in accordance with Section 13967 of the
33 Government Code.

34 (3) Once a month there shall be transferred into the
35 Peace Officers' Training Fund an amount equal to 23.99
36 percent of the state penalty funds deposited in the State
37 Penalty Fund during the preceding month.

38 (4) Once a month there shall be transferred into the
39 Driver Training Penalty Assessment Fund an amount



1 equal to 25.70 percent of the state penalty funds deposited
2 in the State Penalty Fund during the preceding month.

3 (5) Once a month there shall be transferred into the
4 Corrections Training Fund an amount equal to 7.88
5 percent of the state penalty funds deposited in the State
6 Penalty Fund during the preceding month. Money in the
7 Corrections Training Fund is not continuously
8 appropriated and shall be appropriated in the Budget
9 Act.

10 (6) Once a month there shall be transferred into the
11 Local Public Prosecutors and Public Defenders Training
12 Fund established pursuant to Section 11503 an amount
13 equal to 0.78 percent of the state penalty funds deposited
14 in the State Penalty Fund during the preceding month.
15 The amount so transferred shall not exceed the sum of
16 eight hundred fifty thousand dollars (\$850,000) in any
17 fiscal year. The remainder in excess of eight hundred fifty
18 thousand dollars (\$850,000) shall be transferred to the
19 Restitution Fund.

20 (7) Once a month there shall be transferred into the
21 Victim-Witness Assistance Fund an amount equal to 8.64
22 percent of the state penalty funds deposited in the State
23 Penalty Fund during the preceding month.

24 (8) (A) Once a month there shall be transferred into
25 the Traumatic Brain Injury Fund, created pursuant to
26 Section 4358 of the Welfare and Institutions Code, an
27 amount equal to 0.66 percent of the state penalty funds
28 deposited into the State Penalty Fund during the
29 preceding month. However, the amount of funds
30 transferred into the Traumatic Brain Injury Fund for the
31 ~~1996-97, 1997-98, and 1998-99 fiscal years~~ *1996-97 fiscal*
32 *year* shall not exceed the amount of five hundred
33 thousand dollars (\$500,000). Thereafter, funds shall be
34 transferred pursuant to the requirements of this section.

35 (B) Any moneys deposited in the State Penalty Fund
36 attributable to the assessments made pursuant to
37 subdivision (i) of Section 27315 of the Vehicle Code on or
38 after the date that Chapter 6.6 (commencing with
39 Section 5564) of Part 1 of Division 5 of the Welfare and
40 Institutions Code is repealed shall be utilized in

1 accordance with paragraphs (1) to (8), inclusive, of this
2 subdivision.

3 *SEC. 2. The Controller and any other state official of*
4 *whom action is required in order to implement this act*
5 *shall take all necessary actions to ensure that any money*
6 *transferred from the Traumatic Brain Injury Fund to the*
7 *State Penalty Fund pursuant to the amendments to*
8 *Section 1464 of the Penal Code made by Chapter 1023 of*
9 *the Statutes of 1999 is retransferred into the Traumatic*
10 *Brain Injury Fund.*

11 *SEC. 3. Any money, the transfer of which was*
12 *required from the Traumatic Brain Injury Fund pursuant*
13 *to the amendments to Section 1464 of the Penal Code*
14 *made by Chapter 1023 of the Statutes of 1999, and that,*
15 *therefore, is required to be retransferred to that fund*
16 *pursuant to this act, is hereby appropriated to the State*
17 *Department of Mental Health for purposes of Chapter 5*
18 *(commencing with Section 4353) of Part 3 of Division 4*
19 *of the Welfare and Institutions Code without regard to*
20 *fiscal years.*

21 *Code is amended to read:*

22 ~~1367.24. (a) Every health care service plan that~~
23 ~~provides prescription drug benefits shall maintain an~~
24 ~~expeditious process by which prescribing providers may~~
25 ~~obtain authorization for a medically necessary~~
26 ~~nonformulary prescription drug. On or before July 1,~~
27 ~~1999, every health care service plan that provides~~
28 ~~prescription drug benefits shall file with the department~~
29 ~~a description of its process, including timelines, for~~
30 ~~responding to authorization requests for nonformulary~~
31 ~~drugs. Any changes to this process shall be filed with the~~
32 ~~department pursuant to Section 1352. Each plan shall~~
33 ~~provide a written description of its most current process,~~
34 ~~including timelines, to its prescribing providers. For~~
35 ~~purposes of this section, a prescribing provider shall~~
36 ~~include a provider authorized to write a prescription,~~
37 ~~pursuant to subdivision (a) of Section 4040 of the Business~~
38 ~~and Professions Code, to treat a medical condition of an~~
39 ~~enrollee.~~

1 ~~(b) Any plan that disapproves a request made~~
2 ~~pursuant to subdivision (a) by a prescribing provider to~~
3 ~~obtain authorization for a nonformulary drug shall~~
4 ~~provide the reasons for the disapproval in a notice~~
5 ~~provided to the enrollee. The notice shall indicate that~~
6 ~~the enrollee may file a grievance with the plan if the~~
7 ~~enrollee objects to the disapproval, including any~~
8 ~~alternative drug or treatment offered by the plan. The~~
9 ~~notice shall comply with subdivision (b) of Section~~
10 ~~1368.02.~~

11 ~~(c) The process described in subdivision (a) by which~~
12 ~~prescribing providers may obtain authorization for~~
13 ~~medically necessary nonformulary drugs shall not apply~~
14 ~~to a nonformulary drug that has been prescribed for an~~
15 ~~enrollee in conformance with the provisions of Section~~
16 ~~1367.22.~~

17 ~~(d) The process described in subdivision (a) by which~~
18 ~~enrollees may obtain medically necessary nonformulary~~
19 ~~drugs, including specified timelines for responding to~~
20 ~~prescribing provider authorization requests, shall be~~
21 ~~described in evidence of coverage and disclosure forms,~~
22 ~~as required by subdivision (a) of Section 1363, issued on~~
23 ~~or after July 1, 1999.~~

24 ~~(e) Every health care service plan that provides~~
25 ~~prescription drug benefits shall maintain, as part of its~~
26 ~~books and records under Section 1381, all of the following~~
27 ~~information, which shall be made available to the~~
28 ~~commissioner upon request:~~

29 ~~(1) The complete drug formulary or formularies of the~~
30 ~~plan, if the plan maintains a formulary, including a list of~~
31 ~~the prescription drugs on the formulary of the plan by~~
32 ~~major therapeutic category with an indication of whether~~
33 ~~any drugs are preferred over other drugs.~~

34 ~~(2) Records developed by the pharmacy and~~
35 ~~therapeutic committee of the plan, or by others~~
36 ~~responsible for developing, modifying, and overseeing~~
37 ~~formularies, including medical groups, independent~~
38 ~~practice associations, and contracting pharmaceutical~~
39 ~~benefit management companies, used to guide the drugs~~

1 ~~prescribed for the enrollees of the plan, that fully describe~~
2 ~~the reasoning behind formulary decisions.~~

3 ~~(3) Any plan arrangements with prescribing~~
4 ~~providers, medical groups, independent practice~~
5 ~~associations, pharmacists, contracting pharmaceutical~~
6 ~~benefit management companies, or other entities that are~~
7 ~~associated with activities of the plan to encourage~~
8 ~~formulary compliance or otherwise manage prescription~~
9 ~~drug benefits.~~

10 ~~(f) If a plan provides prescription drug benefits, the~~
11 ~~department shall, as part of its periodic onsite medical~~
12 ~~survey of each plan undertaken pursuant to Section 1380,~~
13 ~~review the performance of the plan in providing those~~
14 ~~benefits, including, but not limited to, a review of the~~
15 ~~procedures and information maintained pursuant to this~~
16 ~~section, and describe the performance of the plan as part~~
17 ~~of its report issued pursuant to Section 1380.~~

18 ~~(g) The commissioner shall not publicly disclose any~~
19 ~~information reviewed pursuant to this section that is~~
20 ~~determined by the commissioner to be confidential~~
21 ~~pursuant to state law.~~

22 ~~(h) Nothing in this section shall be construed to~~
23 ~~restrict or impair the application of any other provision~~
24 ~~of this chapter, including, but not limited to, Section 1367,~~
25 ~~which includes among its requirements that a health care~~
26 ~~service plan furnish services in a manner providing~~
27 ~~continuity of care and demonstrate that medical~~
28 ~~decisions are rendered by qualified medical providers~~
29 ~~unhindered by fiscal and administrative management.~~
30 ~~Subdivision (e) of Section 1367.24, which establishes an~~
31 ~~exemption if a drug has been prescribed in conformance~~
32 ~~with Section 1367.22, shall have no effect unless Section~~
33 ~~1367.22 of the Health and Safety Code, as added by~~
34 ~~Assembly Bill 974 of the 1997-98 Regular Session, takes~~
35 ~~effect on or before July 1, 1999.~~

36 ~~(i) On or after January 1, 2000, a health care service~~
37 ~~plan contract shall not include the cost of medically~~
38 ~~necessary oral and injectable prescription drugs,~~
39 ~~including pediatric vaccines, in the capitation and related~~
40 ~~payment of a prescribing or providing health care~~

1 provider, ~~medical group, independent practice~~
2 ~~association, or other prescribing entity. A health care~~
3 ~~service plan, and any pharmaceutical benefit~~
4 ~~management company contracting with the plan, shall~~
5 ~~not require any prescribing or providing health care~~
6 ~~provider, medical group, independent practice~~
7 ~~association, pharmacist, or other prescribing entity to~~
8 ~~assume any financial responsibility for the oral and~~
9 ~~injectable drugs, including pediatric vaccines.~~

10 SEC. 2. ~~No reimbursement is required by this act~~
11 ~~pursuant to Section 6 of Article XIII B of the California~~
12 ~~Constitution because the only costs that may be incurred~~
13 ~~by a local agency or school district will be incurred~~
14 ~~because this act creates a new crime or infraction,~~
15 ~~eliminates a crime or infraction, or changes the penalty~~
16 ~~for a crime or infraction, within the meaning of Section~~
17 ~~17556 of the Government Code, or changes the definition~~
18 ~~of a crime within the meaning of Section 6 of Article~~
19 ~~XIII B of the California Constitution.~~

